STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 17, 2007
v KAREEM DALE RHODES, Defendant-Appellant.	No. 261276 Macomb Circuit Court LC No. 2004-002865-FC

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v RONNIE KEVIN TURRENTINE, Defendant-Appellant.	No. 261277 Macomb Circuit Court LC No. 2004-002867-FC

Before: Zahra, P.J., and Cavanagh and Schuette, JJ.

CAVANAGH, J. (*dissenting*).

I respectfully dissent. I would hold that defendant Rhodes' warrantless arrest was illegal and his inculpatory statement should have been suppressed. Further, the error was not harmless and he is entitled to a new trial. With regard to the other issues raised in this appeal, I agree with the majority opinion.

First, defendant Rhodes' warrantless arrest was illegal. A police officer may make an arrest without a warrant if the officer has probable cause to believe that a felony has been committed and the person committed it. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996), citing MCL 764.15. Probable cause to arrest exists if the facts available to the officer at the time of arrest would justify a fair-minded person of average intelligence in believing that the suspected person committed a felony. *People v Oliver*, 417 Mich 366, 374; 338 NW2d 167 (1983); *People v Kelly*, 231 Mich App 627, 631; 588 NW2d 480 (1998).

Here, after it was determined that the gas tank on defendant Turrentine's vehicle held cocaine, Turrentine's motel room at the Extended Stay Motel was secured. During surveillance

of the room, defendant Rhodes and alleged co-conspirator Lott were seen attempting to enter Turrentine's motel room with a key. Lott had possession of the room key. Officers prevented their entry; they were separated and "detained" for hours, purportedly in handcuffs. Although the police officers testified that defendant and Lott were "detained," the officers admitted that defendant Rhodes and Lott were not free to leave the motel while they investigated the situation.[1] Therefore, defendant Rhodes and Lott were "seized" within the meaning of the Fourth Amendment. See *People v Daniels*, 186 Mich App 77, 80; 463 NW2d 131 (1990).

While under arrest and held at the motel, defendant Rhodes and Lott were read their *Miranda*[2] rights and each were briefly questioned. Lott indicated that he had rented a vehicle and it was located in the parking lot. Lott gave permission to the police officers to search the vehicle and a toolbox that smelled like gasoline was located. Inside the toolbox was a specialized tool to remove the car's drive shaft, latex gloves, a sponge, heat-sealing FoodSaver devices, three rolls of FoodSaver bags, and twist ties. Defendant Rhodes and Lott were then transported to the county jail and, after they were read their *Miranda* rights, they were further questioned. During that questioning, defendant Rhodes provided the inculpatory statement at issue.

Defendant Rhodes' initial arrest outside Turrentine's motel room door, to which Lott had the key, was not supported by probable cause. Although at that time the officers had discovered the cocaine in Turrentine's gas tank, other than an impermissible "guilt by association" theory,[3] the facts known to the arresting officers would not justify a fair-minded person of average intelligence in believing that defendant Rhodes committed a felony. That Lott had the key to Turrentine's motel room should not cause defendant Rhodes to be a felony suspect. The police officers admitted that defendant Rhodes and Lott were "detained," for hours, while they were *investigating* possible criminal activity. The prosecution concedes on appeal that defendant and Lott were arrested and not "detained."

Apparently, however, the majority concludes that, even if defendant Rhodes' initial arrest was unlawful, probable cause to arrest him arose (1) after Lott informed the police that he and Rhodes had been riding around all day in Lott's vehicle, and (2) after it was determined that Lott's vehicle held the tools suspected of being used to place the cocaine in Turrentine's gas tank. I disagree. Merely having purportedly been a passenger in a vehicle that may have some involvement with criminal activity that occurred at some previous time is not a reasonable justification for believing that the passenger was involved in that criminal activity. Any such inference is too tenuous to establish probable cause to arrest. Here, the police had no other evidence linking defendant Rhodes to the criminal activity; therefore, defendant's arrest was unlawful.

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[1] It is illegal to arrest a suspect for investigation of a crime. *People v Davenport*, 99 Mich App 687, 692; 299 NW2d 368 (1980); *People v Martin*, 94 Mich App 649, 653; 290 NW2d 48 (1980); see, also, *Brown v Illinois*, 422 US 590, 602, 605; 95 S Ct 2254; 45 L Ed 2d 416 (1975).

[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[3] See, e.g., *People v Sobczak*, 344 Mich 465, 470; 73 NW2d 921 (1955); *People v Thomas*, 191 Mich App 576, 579-580; 478 NW2d 712 (1991); *People v Casper*, 25 Mich App 1, 5; 180 NW2d 906 (1970).

Second, defendant Rhodes' custodial inculpatory statement should have been excluded as fruit of the poisonous tree. See *People v Spinks*, 206 Mich App 488, 496; 522 NW2d 875 (1994). Suppression is required if there is a causal nexus between the illegal arrest and the inculpatory statement. *People v Mallory*, 421 Mich 229, 243 n 8; 365 NW2d 673 (1984). Factors to be considered in making that determination include: "(1) the time elapsed between the illegal arrest and the confession, (2) the flagrancy of official misconduct, (3) any intervening circumstances, and (4) any circumstances antecedent to the arrest." *Spinks*, *supra*. It is the prosecution's burden to show that the confession was free of the primary taint of defendant's illegal arrest. *People v Mosley (After Remand)*, 400 Mich 181, 183; 254 NW2d 29 (1977).

Here, defendant Rhodes was arrested at the motel at about 11:00 p.m., and at about 1:00 a.m., he was read his *Miranda* rights, signed an advice of rights form, and was asked a few questions. Eventually, defendant Rhodes was transported to jail. At about 5:00 a.m. he was, again, read his *Miranda* rights and he signed an advice of rights form before a second interview was conducted. It was during this second interview that defendant gave his inculpatory statement, after the police informed him that they might be able to help him if he provided information. The police officers testified that defendant was not permitted to make any telephone calls during the approximately six hours between his arrest and his second interrogation.

Based on the record evidence, I conclude the prosecution failed to sustain its burden of establishing that the causal chain between the unlawful arrest and the inculpatory statement was broken. See *People v Martin*, 94 Mich App 649, 653-654; 290 NW2d 48 (1980). The elapse of time between the arrest and inculpatory statement was relatively insignificant, defendant was held incommunicado for its duration, and the police officers admitted that it was, at least initially, an investigative arrest. Defendant was, apparently, merely arrested with the hope that over time he would "cooperate" with the investigation. The fact that defendant was read his *Miranda* rights does not cause the statement to be considered a product of free will for Fourth Amendment purposes. See *Brown v Illinois*, 422 US 590, 601-603; 95 S Ct 2254; 45 L Ed 2d 416 (1975); see, also, *People v Emanuel*, 98 Mich App 163, 176-177; 295 NW2d 875 (1980). And, the record fails to reveal any intervening or antecedent circumstances of significance that would purge the taint of the illegal arrest. See *Kelly*, *supra* at 636. Therefore, defendant Rhodes' inculpatory statement should not have been admitted into evidence.

Further, I cannot conclude that the admission of this evidence was harmless. But for the inculpatory statement, there was very little evidence linking defendant Rhodes to the crime. The evidence includes that he flew into Detroit from California and that he had spent some time with Lott on the day they were arrested. Accordingly, I would reverse the denial of defendant's motion to suppress, and would remand this matter for a new trial.

/s/ Mark J. Cavanagh